

REMARKS:

Applicants respectfully request reconsideration and withdrawal of the outstanding Office Action rejections in view of the foregoing amendments and following remarks.

Claim Amendments

Claims 1 and 3-18 are pending in the application. Without conceding to the Examiner's positions, and solely in the interest of expediting prosecution, the following claim amendments have been made.

Claim 1 has been amended to require that component B is metazachlor or a combination of metazachlor and quinmerac. Written description support for this amendment can be found in the specification as filed at least at p. 6, I. 4 (embodiment M1) and p. 6, II. 21-22 (embodiment M5). No new matter has been added.

Claim 3 has been cancelled.

Claim 4 has been amended to correct the claim dependency, in view of the cancellation of claim 3, and to correct the antecedent basis in view of the amendment to claim 1. No new matter has been added.

Claim 11 has been cancelled.

Claim 12 has been amended to correct the claim dependency, in view of the cancellation of claim 11, and to correct the antecedent basis in view of the amendment to claim 1. No new matter has been added,

Claim 15 has been amended to delete metolachlor and dimethenamid.

Claim 18 has been amended to correct an inadvertent typographical error. No new matter has been added.

New claims 19-21 have been added, directed to mixtures consisting essentially of imazamox and metazachlor. Written description support for this amendment can be found in the specification as filed at least at p. 6, l. 4. No new matter has been added by means of this amendment.

Claim Rejections under 35 USC § 103(a)

The Examiner has rejected all of the pending claims under 35 USC § 103(a) as being obvious over Hacker (US Pat. No. 6,677,276). Hacker is directed to an herbicide for controlling harmful plants in oil-seed rape crops. The Examiner argues that Hacker discloses all of the elements of independent claims 1 and 16, except for the selection of imazamox from the disclosed class of imidazolinones. However, Hacker discloses that a synergistic effect is created when three components, A+A+B, are combined into an herbicide composition (col. 1, ll. 56-62). Other parts of Hacker (see, for example, col. 3, ll. 6-8) disclose that synergistic effects are observed when components A+B are applied jointly. However, reading those further sections of Hacker in light of the disclosure in column 1 implies that component A must actually have two subcomponents to create a synergistic effect. The present claims are directed to a combination consisting essentially of imazamox plus at least metazachlor. A second herbicide in the imazamox component of the mixture, as required in Hacker, cannot be present in the claimed mixture.

Furthermore, Hacker does not provide any guidance or articulated reason that the herbicidal mixture will work without one additional ingredient in component A. To the contrary, Hacker teaches that "active ingredients from the group of the abovementioned

broad-spectrum herbicide (A) in combination with other herbicides from (A) and, if appropriate, certain herbicides (B) act synergistically ..." (col. 1, ll. 56-62). Thus, since component (B) is optional, Hacker teaches that synergism results from a combination of (A) + (A). Therefore, one of skill in the art would not be motivated to include in a mixture only one component (A), as Hacker teaches that doing so will result in a mixture which is devoid of synergism. Therefore, disclosures in Hacker do not render obvious the presently claimed subject matter, and this rejection should be withdrawn.

In addition, even assuming *arguendo* that the disclosure in Hacker did render *prima facie* obvious the presently claimed subject matter, that showing would still be rebutted by the unexpected results obtained with the presently claimed mixtures. Specifically, the synergistic activity of the mixtures in the present claims is clearly demonstrated by the working examples of the present application, namely the data presented in the tables on pp. 15-22. As can be seen from the data, the application of the herbicide mixtures results in an increased activity which exceeds the activity which was expected from the activity of the solo applications of the herbicides.

In this context, please note that the table on pp. 15-17 related to the herbicidal activity of the imazamox plus metazachlor mixture against grasses and broad leaf weeds is applied in winter. As can be seen from the data, the combination leads to an increased herbicidal activity but not to a significant damage of the crop plant.

Based on the discussion above, it is clear that the Examiner has not made a *prima facie* showing of obviousness based on Hacker, and, had one even been made, it would be rebutted by the data in the specification showing synergism. As

such, this rejection has been obviated and should be withdrawn. For these same reasons, new independent claim 19 is also not obvious based on Hacker.

The Examiner has rejected claims 1, 3 and 5-8 under 35 USC § 103(a) as being obvious over Fenderson (US Pat. No. 5,905,060) in view of Kocur (US Pat. Appln. No. 2002/0042345). Fenderson is directed to a method of controlling undesired plant growth by administering dimethenamid together with at least one other herbicide. Kocur is directed to combinations of crop protection agents with polymeric auxiliaries. The Examiner argues that Fenderson discloses all of the elements of the independent claims except that the class of imidazolinones specifically includes imazamox. The Examiner then argues that Kocur supplies that missing information. However, Fenderson discloses a large genus of compositions, including dimethenamid and imidazolinones, but does not disclose the claimed species. Therefore, for Fenderson to render obvious the presently claimed species, the Examiner would have to show reasoning as to why one of skill in the art would pick the particular claimed species out of the large genus disclosed in Fenderson. The Examiner has not done so. Therefore, the Examiner has not made a prima facie case of obviousness based on the combination of Fenderson and Kocur.

Furthermore, the synergism disclosed in Fenderson differs from the synergism of the present claims. In Fenderson, synergism is described as “ ... better and in some cases longer lasting control of undesired plant growth ... [with] co-application rates which are significantly lower than the rate of each individual compound required to obtain the same degree of control.” The present specification,

however, provides (pp. 35-36) "Colby's formula" which compares the actual herbicidal action and the expected herbicidal action to determine when synergism has occurred. The Fenderson synergism is a rather vague concept when compared to the synergism of the present claims. Also, Fenderson does not disclose any type of mathematical formula for determining synergism. Therefore, the Fenderson synergism and the synergism of the present claims are not analogous. As such, this rejection should be withdrawn.

The Examiner has rejected claims 4 and 9-15 under 35 USC § 103(a) as being obvious over Fenderson (US Pat. No. 5,905,060) in view of Kocur (US Pat. Appln. No. 2002/0042345) and further in view of Duckworth (US Pat. No. 5,538,938). Fenderson and Kocur are discussed above. Duckworth is directed to a process for preparing a stable emulsion containing an imidazolinone herbicide. The Examiner argues that Fenderson and Kocur do not teach that the chloracetamide is metazachlor or that the crop treated is oilseed rape, and that Duckworth discloses these missing claim elements. However, as discussed above, Fenderson and Kocur have deficiencies, and these deficiencies are not remedied by Duckworth. As such, this rejection should also be withdrawn.

In view of the foregoing, it is submitted that the present application is now in condition for allowance. Reconsideration and allowance of the pending claims are requested. The Director is authorized to charge any fees or credit any overpayment to Deposit Account No. 02-2135.

Respectfully submitted,

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